

BEFORE THE DIVISION OF MEDICAL QUALITY
BOARD OF MEDICAL QUALITY ASSURANCE
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation
Against:

CHARLES PAT OGNIBENE, M.D.
7500 North Lilla Place
Canoga Park, CA 91304

Physician's and Surgeon's
Certificate No. A 35585,

Respondent.

No. D-3080

L-30509

DECISION

The attached Proposed Decision of the Administrative Law
Judge is hereby adopted by the Board of Medical Quality
Assurance as its Decision in the
above-entitled matter.

This Decision shall become effective on June 22, 1984.

IT IS SO ORDERED May 18, 1984.

BOARD OF MEDICAL QUALITY ASSURANCE
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

BY: 

MILLER MEDEARIS
Secretary-Treasurer

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In the Matter of the Accusation)	
Against:)	
)	No. D-3080
)	
CHARLES PAT OGNIBENE, M.D.)	
7500 North Lilla Place)	L-30509
Canoga Park, CA 91304)	
)	
Physician's and Surgeon's)	
Certificate No. A 35585,)	
)	
)	
Respondent.)	
_____)	

PROPOSED DECISION

This matter came on regularly for hearing before Milford A. Maron, Administrative Law Judge of the Office of Administrative Hearings, at Los Angeles, California, on February 1, 1984. Holly D. Wilkens, Deputy Attorney General, appeared on behalf of the Complainant. Respondent, Charles Pat Ognibene, M.D., appeared in person and was represented by his counsel, Laurie Belger, Esq. Oral and documentary evidence having been introduced, the matter stood submitted, and the Administrative Law Judge applying the standard of proof of clear and convincing evidence to a reasonable certainty, finds the following facts:

I

Stephen R. Wilford, Complainant, is the Acting Executive Director of the Board of Medical Quality Assurance, and made the Accusation in his official capacity.

II

On or about July 18, 1980, the Board of Medical Quality Assurance issued to respondent Charles Pat Ognibene, M.D., physician's and surgeon's certificate number A 35585.

Said certificate is now, and was at all times mentioned herein, in full force and effect.

III

A. Respondent prescribed the following dangerous drugs for the named persons, without conducting a good faith prior examination of such persons, and without medical indication therefor, as follows:

<u>DATE</u>	<u>PATIENT</u>	<u>QUANTITY</u>	<u>MEDICATION</u>
August 12, 1982	S [REDACTED] S [REDACTED] aka R [REDACTED] E [REDACTED]	60	Ritalin* 20 mg.
August 12, 1982	S [REDACTED] S [REDACTED] aka R [REDACTED] E [REDACTED]	30	Valium* 10 mg.
August 18, 1982	M [REDACTED] J [REDACTED] aka J [REDACTED] M [REDACTED]	60	Ritalin 20 mg.
August 18, 1982	M [REDACTED] J [REDACTED] aka J [REDACTED] M [REDACTED]	30	Valium 20 mg.
August 18, 1982	C [REDACTED] W [REDACTED] aka G [REDACTED] M [REDACTED]	60	Ritalin 20 mg.
August 18, 1982	C [REDACTED] W [REDACTED] aka G [REDACTED] M [REDACTED]	30	Valium 10 mg.
September 14, 1982	M [REDACTED] J [REDACTED] aka J [REDACTED] M [REDACTED]	60	Ritalin 20 mg.
September 14, 1982	M [REDACTED] J [REDACTED] aka J [REDACTED] M [REDACTED]	30	Valium 10 mg.
September 14, 1982	C [REDACTED] W [REDACTED] aka G [REDACTED] M [REDACTED]	60	Ritalin 20 mg.
September 14, 1982	C [REDACTED] W [REDACTED] aka G [REDACTED] M [REDACTED]	30	Valium 10 mg.
September 14, 1982	T [REDACTED] R [REDACTED] aka B [REDACTED] S [REDACTED]	60	Ritalin 20 mg.
September 14, 1982	T [REDACTED] R [REDACTED] aka B [REDACTED] S [REDACTED]	30	Valium 10 mg.
September 27, 1982	S [REDACTED] S [REDACTED] aka R [REDACTED] E [REDACTED]	60	Ritalin 20 mg.

*Ritalin and Valium are dangerous drugs within the meaning of Section 4211 of the Business and Professions Code.

September 27, 1982	S [REDACTED] S [REDACTED] aka R [REDACTED] E [REDACTED]	30	Valium 10 mg.
October 6, 1982	C [REDACTED] W [REDACTED] aka G [REDACTED] M [REDACTED]	60	Ritalin 20 mg.
October 6, 1982	C [REDACTED] W [REDACTED] aka G [REDACTED] M [REDACTED]	30	Valium 10 mg.
October 6, 1982	T [REDACTED] R [REDACTED] aka B [REDACTED] S [REDACTED]	60	Ritalin 20 mg.
October 6, 1982	T [REDACTED] R [REDACTED] aka B [REDACTED] S [REDACTED]	30	Valium

B. In addition, respondent was grossly negligent in prescribing the aforementioned substances to said individuals without identifying an appropriate medical indication for treatment and without obtaining an adequate history and findings of a medical indication for treatment and failed to demonstrate any known indication for the substances prescribed.

IV

As a result of the events found above in Finding III, respondent was convicted on April 28, 1983, in the Municipal Court of South Bay Judicial District, County of Los Angeles, State of California, in case number M 253453, entitled "People v. Ognibene," of having violated Section 11154 of the Health and Safety Code, to wit: prescribing a controlled substance to a person not under his treatment. Said conviction is of a crime substantially related to the functions and duties of a physician.

V

Respondent testified in his own behalf and established the following facts:

1. The aforementioned incidents occurred at an alcoholism clinic, his first employment after residency.
2. That although the medication is contra-indicated for alcoholism, he was guided in his treatment by more senior physicians.
3. That he has since left the employ of the subject clinic.
4. The aforementioned conviction resulted in his required performance of 200 hours of community service, i.e., providing free medical treatment.

5. That he no longer treats alcoholics and does not intend to in the future. He is now engaged in private general practice.

6. He is married and supports a family of five (5), including himself.

* * * * *

Pursuant to the foregoing findings of fact, the Administrative Law Judge makes the following determination of issues:

Cause for disciplinary action exists against respondent pursuant to Sections 2234(b), 2234(d), 2237(a) and 2242 of the Business and Professions Code.

* * * * *

WHEREFORE, THE FOLLOWING ORDER is hereby made:

Physician and surgeon's certificate no. A 35585, heretofore issued to respondent, Charles Pat Ognibene, M.D., is hereby revoked; provided, however, that said revocation shall be stayed and respondent placed on probation for a period of five (5) years upon the following terms and conditions:

1. Respondent shall be suspended from engaging in activities requiring licensure for a period of forty-five (45) days;

2. Respondent shall obey all federal, state and local laws, and all rules governing the practice of medicine in California;

3. Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Division, stating whether there has been compliance with all the conditions of probation;

4. Respondent shall comply with the Division's probation surveillance program;

5. Respondent shall appear in person for interviews with the Division's medical consultant upon request at various intervals and with reasonable notice;

6. Within 60 days of the effective date of this decision, respondent shall submit to the Division for its prior approval, a clinical education program related to the

prescribing violations found in the Decision. The exact number of hours and the specific content of the program shall be determined by the Division, or its designee, and shall total not less than four nor more than twenty hours per week for a period of not less than three months, nor more than two years. Respondent shall complete the clinical training program within two years and six months of the effective date of this Decision;

7. Upon completion of the clinical training program, respondent shall take and pass an oral clinical examination to be administered by the Division, or its designee. If respondent fails this examination, respondent must wait three months between re-examinations, except that after three failures respondent must wait one year to take each necessary re-examination thereafter. The Division shall pay the cost of the first examination and respondent shall pay the costs of any subsequent examinations. The taking and successfully passing the examination shall be considered as a condition subsequent to continued licensure;

8. Respondent is prohibited from engaging in solo practice. Within 30 days of the effective date of this Decision, respondent shall submit to the Division, and receive its prior approval, for a plan of practice limited to a supervised, structured environment, in which respondent's activities will be overseen and supervised by another physician;

9. In the event respondent should leave California to reside or to practice outside the State, respondent must notify in writing the Division of the dates of departure and return. Periods of residency or practice outside California will not apply to the reduction of this probationary period.

* * * * *

If respondent violates probation in any respect, the Division, after giving respondent notice and the opportunity to be heard, may set aside the stay order and impose the revocation of the respondent's certificate. Upon successful completion of probation, respondent's certificate will be fully restored.

I hereby submit the foregoing which constitutes my Proposed Decision in the above-entitled matter, as a result of the hearing had before me on February 1, 1984, at Los Angeles, California, and recommend its adoption as the decision of the Board of Medical Quality Assurance

DATED: Feb 6, 1984


MILFORD A. MARON

Administrative Law Judge
Office of Administrative Hearings

MAM:btm

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 of the State of California
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 9 BEFORE THE
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 10 BOARD OF MEDICAL QUALITY ASSURANCE
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11
 12 In the Matter of the Accusation) NO. D-3080
 Against:)
) ACCUSATION
 13 CHARLES PAT OGNIBENE, M.D.)
 7500 North Lilla Place)
 14 Canoga Park, CA 91304)
)
 15 Physician's and Surgeon's)
 Certificate No. A 35585,)
 16)
 Respondent.)
 17)

18 COMES NOW complainant Stephen R. Wilford, who, as
 19 cause for disciplinary action, alleges as follows:

20 1. He is the Acting Executive Director, of the Board
 21 of Medical Quality Assurance (hereinafter referred to as the
 22 "board") and makes and files this accusation solely in his
 23 official capacity.

24 2. On or about July 18, 1980, the Board of Medical
 25 Quality Assurance issued to Charles Pat Ognibene, M.D.
 26 (hereinafter referred to as "respondent"), physician's and
 27 surgeon's certificate number A 35585. Said certificate is now,

1 and was at all times mentioned herein, in full force and effect.

2 3. Sections 2220 and 2234 of the Business and
3 Professions code (hereinafter referred to as the "code") provide
4 in pertinent part that the board may take action against the
5 holder of a physician's and surgeon's certificate who is guilty
6 of unprofessional conduct.

7 4. Section 2242 of the code provides, in pertinent
8 part, that the prescribing, dispensing or furnishing of
9 dangerous drugs as defined in section 4211 of the code without a
10 good faith prior examination and medical indication therefor,
11 constitutes unprofessional conduct.

12 5. Ritalin and Valium are dangerous drugs within the
13 meaning of section 4211 of the code.

14 6. Respondent is subject to discipline pursuant to the
15 provisions of section 2242 of the code, in that respondent has
16 prescribed the following dangerous drugs as defined in section
17 4211 of the code, for the following persons, without conducting a
18 good faith prior examination of such persons, and without medical
19 indication therefor, as more particularly alleged hereinafter:

20	<u>Date</u>	<u>Patient</u>	<u>Quantity</u>	<u>Medication</u>
21	August 12, 1982	S. [REDACTED] S. [REDACTED] aka R. [REDACTED] E. [REDACTED]	60	Ritalin 20 mg.
22				
23	August 12, 1982	S. [REDACTED] S. [REDACTED] aka R. [REDACTED] E. [REDACTED]	30	Valium 10 mg.
24				
25	August 18, 1982	Melvin J. [REDACTED] aka J. [REDACTED] M. [REDACTED]	60	Ritalin 20 mg.
26				

27 /

	<u>Date</u>	<u>Patient</u>	<u>Quantity</u>	<u>Medication</u>
1				
2	August 18, 1982	M[REDACTED] J[REDACTED] aka J[REDACTED] M[REDACTED]	30	Valium 20 mg.
3				
4	August 18, 1982	Ch[REDACTED] W[REDACTED] aka G[REDACTED] M[REDACTED]	60	Ritalin 20 mg.
5	August 18, 1982	Ch[REDACTED] W[REDACTED] aka G[REDACTED] M[REDACTED]	30	Valium 10 mg.
6				
7	September 14, 1982	M[REDACTED] J[REDACTED] aka J[REDACTED] M[REDACTED]	60	Ritalin 20 mg.
8	September 14, 1982	M[REDACTED] J[REDACTED] J[REDACTED] M[REDACTED]	30	Valium 10 mg.
9				
10	September 14, 1982	Ch[REDACTED] W[REDACTED] aka G[REDACTED] M[REDACTED]	60	Ritalin 20 mg.
11	September 14, 1982	Ch[REDACTED] W[REDACTED] aka G[REDACTED] M[REDACTED]	30	Valium 10 mg.
12				
13	September 14, 1982	T[REDACTED] R[REDACTED] aka B[REDACTED] S[REDACTED]	60	Ritalin 20 mg.
14	September 14, 1982	T[REDACTED] R[REDACTED] aka B[REDACTED] S[REDACTED]	30	Valium 10 mg.
15				
16	September 27, 1982	S[REDACTED] S[REDACTED] aka R[REDACTED] E[REDACTED]	60	Ritalin 20 mg.
17	September 27, 1982	S[REDACTED] S[REDACTED] aka R[REDACTED] E[REDACTED]	30	Valium 10 mg.
18				
19	October 6, 1982	Ch[REDACTED] W[REDACTED] aka G[REDACTED] M[REDACTED]	60	Ritalin 20 mg.
20	October 6, 1982	Ch[REDACTED] W[REDACTED] aka G[REDACTED] M[REDACTED]	30	Valium 10 mg.
21				
22	October 6, 1982	T[REDACTED] R[REDACTED] aka B[REDACTED] S[REDACTED]	60	Ritalin 20 mg.
23	October 6, 1982	T[REDACTED] R[REDACTED] aka B[REDACTED] S[REDACTED]	30	Valium
24				

25 7. Section 2234, subdivision (b), of the code
26 provides that unprofessional conduct includes, but is not
27

1 limited to, gross negligence.

2 8. Section 2234, subdivision (d), of the code
3 provides that unprofessional conduct includes, but is not
4 limited to, incompetence.

5 9. Respondent is subject to disciplinary action in
6 that respondent has been guilty of gross negligence within the
7 meaning of section 2234, subdivision (b), of the code, as more
8 particularly alleged hereinafter:

9 A. The allegations set forth hereinabove at
10 paragraph 6, are incorporated herein as though fully
11 set forth at length.

12 B. Respondent was grossly negligent in
13 prescribing substances to individuals as set forth
14 hereinabove, without identifying an appropriate
15 medical indication for treatment and without obtaining
16 an adequate history and findings of a medical
17 indication for treatment and failed to demonstrate any
18 known indication for the substances prescribed.

19 10. Respondent is subject to further disciplinary
20 action pursuant to section 2234, subdivision (d), of the code,
21 in that respondent's conduct as set forth hereinabove at
22 paragraph 10, subparagraphs A through B, inclusive, constitutes
23 incompetence.

24 11. Section 2237, subdivision (a) of the code,
25 provides in part, that the conviction of a charge of violating any
26 federal statutes or regulations or any statute or regulation of
27 this state, regulating narcotic dangerous drugs, or controlled

1 substances constitutes unprofessional conduct. Said subdivision
2 further provides the record of the conviction is conclusive
3 evidence of such unprofessional conduct.

4 12. Respondent is further subject to discipline
5 pursuant to section 2237, subdivision (a) of the code in that he
6 has been convicted of a crime which is substantially related to
7 the functions and duties of a physician. As a result of the
8 facts set forth hereinabove in paragraph 6, respondent was
9 convicted on April 28, 1983, in the Municipal Court of
10 South Bay Judicial District, County of Los Angeles, State of
11 California, in case number M 253453, entitled People v. Charles
12 Pat Ognibene, having entered a plea of nolo contendere to the
13 charge of violating Health and Safety Code section 11154, to
14 wit: prescribe a controlled substance to a person not under his
15 treatment.

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1 WHEREFORE, complainant requests that a hearing be held
2 on the matters alleged hereinabove, and that following said
3 hearing, the board issue a decision:

4 1. Revoking or suspending physician's and surgeon's
5 certificate number A 35585, heretofore issued to Charles Pat
6 Ognibene, M.D., by the Board of Medical Quality Assurance; and

7 2. Taking such other and further action as the board
8 deems proper.

9 DATED: July 15, 1983.

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STEPHEN R. WILFORD
Acting Executive Director
Board of Medical Quality Assurance
State of California

Complainant

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